

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

ALLWAYS EAST TRANSPORTATION, INC.

and

**Case No.: 03-CA-128669
03-CA-133846**

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 445**

**RESPONDENT ALLWAYS EAST TRANSPORTATION, INC.'S
REQUEST FOR AN EXTENSION OF TIME TO FILE ANSWERING
BRIEF TO THE EXCEPTIONS OF GENERAL COUNSEL
AND A MOTION BY RESPONDENT, ALLWAYS EAST
TRANSPORTATION, INC., TO EXCEED PAGE LIMITATIONS FOR
ANSWERING BRIEF TO THE EXCEPTIONS FILED BY GENERAL COUNSEL**

Pursuant to §102.46(d)(3) of the National Labor Relations Board's Rules and Regulations, counsel for Respondent, Allways East Transportation, Inc. ("Allways East" and/or "Respondent") files this request for an extension of time to file its Answering Brief to the Exceptions and Supporting Brief filed by General Counsel in the above matter due to the Administrative Law Judge's Decision in the above-named case. Further, pursuant to §102.46(j) of the National Labor Relations Board's Rules and Regulations, counsel for the Respondent files a motion to exceed the page limitations for an Answering Brief to the Exceptions and Supporting Brief filed by the General Counsel in the above-captioned matter.

With respect to counsel for Respondent's request seeking an extension of time to file its Answering Brief, the Board had previously granted a "partial extension of time" to file an Answering Brief pursuant to a Cross-Motion made by counsel for Respondent in response to General Counsel's motion for an extension of time and motion to exceed page limitation, both of which requests were granted by the Board. In granting a partial extension of time by Decision dated December 17, 2015, the Board noted that the Respondent's request was premature at that time since counsel for Respondent was not in receipt of General Counsel's Exceptions and Supporting Brief. Therefore, as set forth in the

Decision “some, but not all, of the time requested is granted”. Respondent had requested an extension of time until February 12, 2016. However, the “partial extension” was granted until January 18, 2016. Now that the Exceptions and Supporting Brief have been received and due to the timing of the serving of the Exceptions and Supporting Brief, as set forth in counsel for Respondent’s previous motion papers, it is evident that the Respondent will need additional time in which to respond to the voluminous Exceptions and lengthy Supporting Brief.

A review of General Counsel’s Exceptions to the Decision and Order of the Administrative Law Judge in the above matter, which consists of 56 Exceptions, indicates that in effect General Counsel has excepted to every aspect of the Administrative Law Judge’s Decision, dated November 12, 2015. In support of its voluminous Exceptions to almost every issue of fact and law decided by the Administrative Law Judge, General Counsel has submitted a Supporting Brief consisting of 54 pages, containing over 85 case citations, all of which will need to be reviewed, analyzed and responded to in Respondent’s Answering Brief. Further, an initial review reveals that General Counsel has cited to alleged evidence not contained in the Record and, thus, motion practice will also be necessary.

Further, by serving their brief on December 21, 2015 during the holiday season, as opposed to the original due date of December 10, 2015, General Counsel has effectively served their Exceptions and Supporting Brief during a time in which the law firm of counsel for Respondent is closed for most of the two week holiday period and the two partners handling this matter are on vacation and thus unable to commence the preparation of the Answering Brief for the remaining time.

As pointed out in our previous Cross-Motion for an extension of time to file an Answering Brief, based on the extension granted to General Counsel, our Answering Brief would have been due by January 4, 2016. Again, as previously pointed out, counsel for Respondent’s office was closed on December 24 and 25 and will be closed, other than support staff answering phones, on December 31, and will be fully closed on January 1. Further, as stated above, the partners assigned to this matter will be on vacation during most, if not all, of the remaining five working days between December 22, 2015 and January 4, 2016. As a result, by granting a “partial extension of time” for 14 days until January 18, 2016, the Board

has effectively only granted the Respondent the standard amount of time in which to submit an Answering Brief, 14 days, in view of the holiday season, office closure and vacation schedules of the attorneys involved. It is for that reason that the original request for an extension of time was for a 39 day extension of time.

In view of the fact that counsel for Respondent is now in receipt of the Exceptions and Supporting Brief which, upon review, in effect, excepts to almost every issue of law and fact set forth in the Administrative Law Judge's Decision and the voluminous Brief with over 80 citations, counsel for Respondent renews their request for an extension of time until February 12, 2016 (the same amount of time General Counsel had to prepare and file their Exceptions and Supporting Brief).

Based upon the above, equity and fairness dictates extending the Respondent's time to file the Answering Brief beyond the partial extension granted to January 18, 2016. The Board is not restricted as to how long an extension can be granted pursuant to §102.46(d)(1). Again, as set forth above, in granting the request made by counsel for Respondent, the first 14 days following the service of the Exceptions and Supporting Brief should not be considered when determining the time needed for Respondent to prepare and file answering papers based upon the time of the year, vacation schedules, holidays and weekends.

There is no prejudice to anyone granting counsel for Respondent's request for an additional extension of time. Certainly, General Counsel cannot claim any prejudice, as they have already requested and have been granted an extension of time, thus providing them with 39 days to review and prepare their Exceptions and Supporting Brief.

Pursuant to §102.46(j) of the Board's Rules and Regulations, counsel for Respondent seeks permission to exceed the page limitations for an Answering Brief to the Exceptions and Supporting Brief filed by General Counsel in the above matter. There is no prejudice to the granting of this relief, as counsel for General Counsel has made this same motion, which motion was granted by the Board.

While counsel for Respondent does not intend to overburden the Board, it seeks leave to file a Brief not to exceed 70 pages in order to properly advance all Supporting arguments. In fact, in further support of this request and the request for additional time, General Counsel has submitted Exceptions of

ten (10) pages and a Supporting Brief to its Exceptions which is 50% longer than General Counsel's Post-Hearing Brief submitted to the Administrative Law Judge! This further supports counsel for Respondent's statements above that, in effect, the Exceptions and Supporting Brief filed by General Counsel excepts to almost every question of fact and law decided by the Administrative Law Judge, thus necessitating the need for counsel for Respondent to have an additional extension of time in order to properly respond to all Exceptions and need to exceed the page limitation contained in the Board's Rules and Regulations, again, in order to properly advance all arguments in opposition to the Exceptions filed by General Counsel.

Therefore, it is respectfully requested that the request and motion herein be granted and that the Respondent's "partial extension of time to file Answering Brief" be granted to the full extent previously requested and that Respondent's time to file its Answering Brief be extended to February 12, 2016 and, further, that Respondent's motion for permission to exceed the page limitation on its Answering Brief be granted to the extent that the Brief shall not exceed 70 pages, as also requested and granted to counsel for General Counsel.

DATED at Lake Success, New York this 28th day of December 2015.

Respectfully Submitted,

/s/
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STATEMENT OF SERVICE

I hereby certify that on December 28, 2015, I electronically filed Allways East Transportation, Inc.'s Request for Extension of Time to File its Brief to General Counsel's Exceptions and Supporting Brief and Motion to Exceed Page Limitation in Cases 03-CA- 128669, et. al. to the Executive Secretary of the National Labor Relations Board using the NLRB E-Filing System, and I hereby certify that I provided copies of the same document via email to John Grunert, Counsel for The General Counsel of the National Labor Relations Board, and Daniel E. Clifton, Counsel for International Brotherhood of Teamsters, Local 445.

DATED at Lake Success, New York, this 28th day of December, 2015.

Respectfully submitted,

/s/

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